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5 IN THE UNITED STATES DISTRICT COURT
6 FOR THE NORTHERN DISTRICT OF CALIFORNIA
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8 JAMES CARLIN,

No. C 06-4145 SI

9 Petitioner,

**ORDER DENYING PETITIONER'S
MOTION TO STRIKE ANSWER**

10 v.

11 ROBERT WONG, Acting Warden,

12 Respondent.
13 _____/

14 Petitioner's motion to strike the answer is scheduled for a hearing on June 8, 2007. Pursuant
15 to Civil Local Rule 7-1(b), the Court determines that the matter is appropriate for resolution without oral
16 argument, and VACATES the hearing.

17 Petitioner moves to strike the answer on the ground that respondent did not comply with the
18 Court's July 24, 2006 Order to Show Cause, Rule 5 of the Rules Governing § 2254 Cases, and AEDPA.
19 Petitioner's motion challenges the fact that respondent did not include every exhibit that was filed in
20 the state court, and because respondent included additional exhibits that were not filed with the state
21 court.


22 After review of the relevant rules, the Court finds no error on respondent's part. Under this
23 Court's order and Rule 5 of the Rules Governing § 2254 Cases, respondent was required to provide,
24 *inter alia*, a copy of the transcript of the parole hearing, "any brief that petitioner submitted in an
25 appellate court contesting the conviction or sentence, or contesting an adverse judgment or order in a
26 post-conviction proceeding," and all portions of the parole hearing record that are "relevant to a
27 determination of the issues presented by the petition." Petitioner contends that respondent should have
28 provided a copy of all of the exhibits submitted in connection with petitioner's two state court petitions

1 filed in superior court. However, neither the Court's order nor Rule 5 clearly requires respondent to file
2 these exhibits. Petitioner does not cite any authority for the proposition that respondent has violated
3 AEDPA. The Court also finds no error in respondent's submission of two exhibits that were not filed
4 in state court; the Court makes no finding at this juncture regarding the relevance of these exhibits.

5 To the extent that petitioner wishes to supplement the record with any exhibits, petitioner may
6 do so. Petitioner shall file a traverse, along with any additional exhibits, no later than **June 11, 2007**.

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8 **IT IS SO ORDERED.**

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10 Dated: May 22, 2007



SUSAN ILLSTON
United States District Judge